IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

OP.No. 28105 of 1999(U)

PETITIONER:

O.BABY, S/O.KOCHUMON,
RETIRED HEADMASTER,
SREEMANDIRAM,
CHEPRA (PO),
KOLLAM DISTRICT.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. DISTRICT EDUCATIONAL OFFICER,
KOTTARAKKARA.

3. DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM.

4. ACCOUNTANT GENERAL (KERALA),
THIRUVANANTHAPURAM.

BY SR. GOVERNMENT PLEADER SRI.T.T.MAHAMOOD.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON 18/09/2007 DELIVERED THE FOLLOWING:

APPENDIX
(OP NO. 28105 OF 1999)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Govt. Order dtd.3.1.1981.

Ext.P2: Copy of appointment order dtd.24.10.95.

Ext.P3: Copy of report dtd.19.3.98.

Ext.P4: Copy of Govt. letter dtd.15.12.98.

Ext.P5: Copy of Govt.Order dtd.10.12.92.

Ext.P6: Copy of judgment dtd.21.12.98 in OP No.17324/1998.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P. No. 28105 of 1999

Dated this the 18th day of September, 2007

J U D G M E N T

The petitioner herein is a retired Headmaster of an aided school. He is aggrieved by the non-sanctioning of headmaster's scale of pay and 27 years' higher grade during his service. The bare facts necessary for disposal of this writ petition may be summarised as follows:-

2. The petitioner, although had temporary service as H.S.A.(Malayalam) in 1963, started continuous service on 2.6.1965. At that time, he had educational qualification of B.A.degree. He obtained M.A.degree in 1965, Language Teacher's Training Certificate (L.T.T.C.) in March, 1967 and B.Ed.degree in April, 1983. His promotion as Headmaster by Ext.P2 was approved with effect from 1.4.1996. He retired as Headmaster on 31.3.1999. The petitioner's claim is that by virtue of Rule 3 of Chapter XXVI of the Kerala Education Rules (for short 'the K.E.R.'), since he had put in 16 years of service as a trained teacher, he is entitled to Headmaster's scale from the date when he completed 16 years as a trained teacher, which

according to him should be reckoned from March 1967 on which date he attained L.T.T.C.qualification. Regarding higher grade, he contends that since he has put in 27 years of service as on 1.4.96, he is entitled to 27 years' higher grade with effect from that date. Both his claims were rejected by the Government by Ext.P4 order. He therefore seeks the following reliefs in this original petition:-

> "i. to issue a writ of certiorari or other writ or order or directing calling for the records leading upto Ext.P6 and quash Ext.P4.
> ii. to issue a writ of mandamus or any other writ or order or direction directing the respondents to grant Headmaster's scale of pay and 27 years Headmaster's Higher Grade to the petitioner w.e.f.1.4.96 or any subsequent dates as per the option of the petitioner and pay consequential arrears of salary and re-fix the pensionary benefits of the petitioner taking into account the Headmaster's scale and 27 years Headmaster's higher grade and disburse difference in pay and pensionary benefits with 18% interest.
> iii. To issue such other further reliefs as this Honourable Court may deem fit and proper in the facts and circumstances of this case."

3. On the question of 27 years' higher grade, the petitioner's eligibility cannot now be disputed since the petitioner has put in more than 27 years of service taking into account his service as H.S.A. and Headmaster together, which is permissible as per the Government Orders on the subject. In fact, this fact is not disputed in the counter affidavit filed by the first respondent. Therefore, he is entitled to 27 years' higher grade with effect from the date of completion of 27 years of service taking into account his service as H.S.A. also.

4. Petitioner's eligibility for Headmaster's scale has to be considered on the basis of Rule 3 of Chapter XXVI of the Kerala Education Rules, which rule reads thus:-

> "3. The Headmaster of an Aided complete Secondary School/Training School shall be given the Departmental Headmaster's scale of pay only if he has put in a minimum of 16 years of continuous service as graduate teacher in schools recognised by the department. Those Headmasters with a minimum continuous

> qualifying service of 12 years as graduate teachers shall be given such allowance as may be fixed by Government.
>
> Provided that the Headmaster appointed on a regular basis prior to the coming into force of these Rules shall be allowed to continue in their existing scale of pay." (emphasis supplied)

Going by the above rule in order to become eligible for Departmental Headmaster's scale only, the petitioner has to put in a minimum of 16 years of continuous service as a graduate teacher.

5. In this respect, the petitioner raises two contentions. First is that the petitioner's service as H.S.A. after he obtained L.T.T.C. should be regarded as graduate service. The second is that as per Rule 44A of Chapter XIVA of the K.E.R., the minimum service qualification for appointment as Headmaster of an aided school is 12 years of graduate service and therefore, the prescription of 16 years for Headmaster's scale is arbitrary and unreasonable.

6. Rule 44A of Chapter XIV A of the K.E.R. reads thus:-

"44A. (1) Subject to the provisions contained in sub-rule(1) of rule 44, the minimum service qualification of appointment as Headmaster in Aided Complete High Schools/Training Schools shall be twelve years of continuous graduate service (with a pass in the test in Kerala Education Act and the Kerala Education Rules) (and a pass in account Test (Lower) conducted by Kerala Public Service Commission.)

[Provided that Headmasters of High and Training Schools, who were actually holding the said post on the eleventh day of June, 1974 shall stand exempted from passing the Account Test (Lower)]

[Provided further that Teachers who have attained the age of 50 years shall stand exempted permanently from acquiring the test qualification specified in Sub rule(1)]

[xxxxxxxx]

[Explanation:- For the purpose of this rule, "Graduate Service" means all service of a teacher as High School Assistant, Training School Assistant, Headmaster of an incomplete High School, Headmaster of a complete Upper Primary School/Middle school or Headmaster of a Training School after acquisition of Collegiate training such as B.T., L.T. or B.Ed. But in the case of such teachers appointed prior to 15-10-1957 their untrained service after graudation shall also be reckoned as "Graduate Service", provided that

> their appointments were not in accordance with the Madras Educational Rules.]
>
> [Note:- A period of 8 years from 6-11-1968 is given to Headmasters or Aided complete High and Training Schools for passing the test in the Act and Rules. All appointments to the posts of Headmasters of Aided complete High and Training Schools during the period of 8 years from 6.11.1968 shall be provisional. If such persons do not secure the test qualification within the specified period they will be reverted.]

Since this rule specifically defines “graduate service” for the purpose of Rule 3 of Chapter XXVI also the same definition has to be adopted. Going by the same, the service obtained after obtaining B.T., L.T. or B.Ed. Training only can be treated as graduate service. Therefore, the date of acquisition of L.T.T.C.(Language Teachers' Training Certificate) by the petitioner in 1967 is not relevant for the purpose. That service would be relevant only for the purpose of continuance as H.S.A. The service put in by him after obtaining B.Ed.degree in April 1983 alone can be reckoned for the purpose of computing graduate service. The petitioner retired on

31.3.1999 before completing 16 years of graduate service. Therefore, there is no merit in the petitioner's first contention.

7. The second contention of the petitioner also does not appeal to me. Rule 44A of Chapter XIVA of the K.E.R.relates to minimum service qualification for appointment as headmaster, which is 12 years' graduate service. Rule 3 of Chapter XXVI goes further in prescribing 16 years of graduate service for becoming eligible for Departmental Headmaster's scale. There is nothing arbitrary or unreasonable in prescribing such separate minimum service qualifications for two different purposes. This exact question has been considered by a learned single Judge of this Court in **John** v. **State of Kerala** (1997(2) KLT 421). I am in respectful agreement with the said decision.

8. In view of the above findings, I have no hesitation to hold that since the petitioner had not completed 16 years of graduate service before his retirement, he is not eligible for Department

Headmaster's scale under Rule 3 of Chapter XXVI of the K.E.R.

9. Since I have held that the petitioner had become eligible for 27 years' higher grade much before his retirement, his salary and allowances shall be refixed as on the date on which he completed 27 years of service as an H.S.A. and Headmaster put together, in the higher grade scale and arrears disbursed to him. His retirement benefits also shall be recomputed and arrears disbursed accordingly. Orders in this regard shall be issued by the competent among the respondents within two months from the date of receipt of a copy of this judgment. Ext.P4 is quashed to that extent.

The original petition is disposed of as above.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J.

O.P.NO. 28105 OF 1999

J U D G M E N T

DATED: 18-09-2007